criminal case is without merit. The specific order in *Chase* was virtually identical to the order in *Tijerina*, but the Tenth Circuit held that the order met constitutional requirements, and the Seventh Circuit decisions make it abundantly clear that such orders do not incorporate the proper constitutional standard.

Review of the Judiciary's Court Rules Should Not Depend Upon the Solicitor General's Action or Inaction.

The rules were drafted and promulgated by the federal judiciary to protect the integrity of the judicial function by providing guidelines for the trial courts and the lawyers who are officers of those courts. Contrary to the impression which the Council apparently would like to create, the United States Attorney for the Northern District of Illinois, serving as counsel for the three defendants throughout the years this case was under consideration in the courts below, faithfully supported the rules, even though he was in a somewhat awkward position because the rules proscribed extrajudicial comments of government and non-government lawyers alike. Further, as noted earlier, the Solicitor General, as well as the United States Attorney and the Marshal, are officers of the executive branch of the federal government. While the latter two were defendants in this case, they had no role in the formulation of the existing rules, and they clearly have no authority to promulgate new court rules. For this reason alone, the Solicitor General could well have determined that it would be inappropriate for him to initiate any review of the decision below.

In any event, the petitioner here, who is an officer in the judicial branch of the federal government, and the District Court whose rules have been struck down, determined to retain independent counsel who could without question represent the judiciary's interests in the rules with undivided loyalty. The Council's suggestion that the Court should not review the rules unless the executive branch chooses to initiate such review would leave the federal courts without any means to carry out one of their principal supervisory powers.

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CONCLUSION.

If there were any reservations about the imperative nature of the need for this Court to offer some guidance and clarification for the federal bench and bar in this vitally important area, those reservations surely have been laid at rest by the contentions made in the Council's Brief in Opposition to the Petition.

They certainly considered the constitutional issues important enough to file suit challenging the District Court rules in their entirety, before any litigation had been filed involving the application of any one of the rules. Having obtained a declaration in their behalf of the invalidity of all of the rules as formulated by the Judicial Conference and adopted by the local district court, they would now like to end the controversy which they initiated. Suddenly, for the first time, they now insist that the rules (whatever they may be after being mutilated by the decision below) should not be reviewed by the Court because "the posture of this case makes it singularly inappropriate for this Court's review because it does not present the actual application of restraints to any specific exercise of free speech by respondents." (Council's Br., p. 4) If this litigation presented a justiciable controversy when the plaintiffs filed their complaint, the controversy is just as real and in need of resolution today as it was then.

These very same rules, which were struck down by the reviewing court below, have been adopted in nearly all of the district courts throughout the country. Must all these district courts and the Judicial Conference go "back to the drawing board"—as the Council's Brief demands? And, if they must, how are they to recast their rules, especially as they pertain to federal civil trials? It would be an invitation to chaos for this Court to stay its hand, for if there are to be any authoritative court rules relating to this crucially important subject, now is the time to settle the questions raised by the Seventh Circuit decision. One of the purposes of the arduous study undertaken by the Judicial

Conference was to achieve a set of narrowly-drawn, uniform rules for the guidance of all federal district courts. This objective will not be achieved if the case-by-case approach suggested by the Council's Brief is followed. All of those rules will be in limbo and subject to challenge so long as this decision is permitted to stand. The concerns which the Council has recently discovered about whether the Seventh Circuit has rendered an advisory opinion are so disingenuous as to be unworthy of further consideration. Petitioner respectfully submits that the advancement of this argument is a compelling reason by itself for this Court to review the matter on the merits.

Respectfully submitted,

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